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Mayor

CITY OF NEWTON, MASSACHUSETTS

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Public Hearing Date:	October 6, 2009
Land Use Action Date:	December 15, 2009
Board of Aldermen Action Date:	December 21, 2009
90-Day Expiration Date:	January 4, 2010

DATE: October 2, 2009

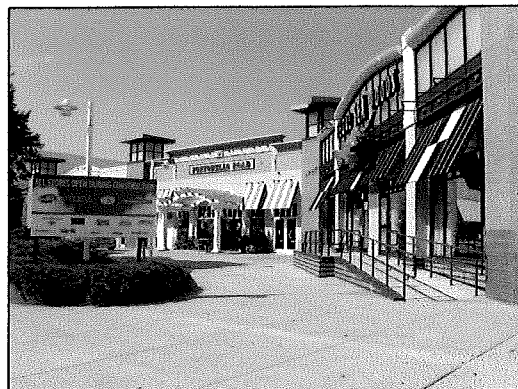
TO: Board of Aldermen

FROM: Michael Kruse, Director of Planning and Development
Candace Havens, Chief Planner 
Alexandra Ananth, Senior Planner

SUBJECT: Petition #244-09 of, S. R. WEINER ASSOCIATES INC./CHESTNUT HILL SHOPPING CENTER, LLC/C&R REALTY TRUST for a SPECIAL PERMIT/SITE PLAN APPROVAL and EXTENSION OF NONCONFORMING USE for a restaurant in excess of 50 seats; to increase the number of seats in two existing legal nonconforming restaurants currently having in excess of 50 seats; to convert a portion of retail space in the new Star Market from retail to three restaurants with an associated waiver of 109 parking spaces at 1-27; 33-35 BOYLSTON STREET, Ward 7, CHESTNUT HILL, on land known as Sec 63, Blk 37, Lot 25, 26, 27, 18A, containing approx 767,306 sf of land in a district zoned BUSINESS 1.

CC: Mayor David B. Cohen
Jeff Levine, Director Department of Planning and Community Development,
Town of Brookline

The purpose of this memorandum is to provide the Board of Aldermen and the public with technical information and planning analysis which may be useful in the special permit decision making process of the Board of Aldermen. The Planning Department's intention is to provide a balanced view of the issues with the information it has at the time of the public hearing. There may be other information presented at or after the public hearing that the Land Use Committee of the Board of Aldermen will want to consider in its discussion at a subsequent Working Session.



EXECUTIVE SUMMARY

The subject property consists of four parcels totaling 767,306 sq. ft. (17.6 acres). The site is improved with four large buildings containing a mix of commercial uses and shared surface parking. The area is collectively called the Chestnut Hill Shopping Center and includes an adjacent parcel located in the Town of Brookline, which contains additional parking spaces serving the Shopping Center. Tenants in this shopping center include Macy's department store, approximately ten soft goods and retail shops, three restaurants, an office complex, a medical office complex, two banks, an AMC Cineplex, and a Star Market grocery store (currently under construction, but expected to open at the end of October 2009). The Shopping Center obtained a special permit from the Board of Aldermen in 2003 for the reconstruction and enlargement of Star Market (BO #401-03), which included 10,610 sq. ft. of retail space on the first floor for uses complementary to the grocery store above. As part of the 2003 approval, the Board waived 67 parking spaces to allow for the uses proposed at the time. The property owners are now seeking to change the mix of uses and request additional parking waivers to the number of stalls required:

- On the western side of the site, in the 5,400 sq. ft. space currently occupied by Portobello Road, the petitioner is seeking to locate a new 275-seat restaurant, requiring an 83-stall parking waiver.
- Also, on the western side of the site Legal Sea Foods proposes to add 20 outdoor seats to the existing 285-seat restaurant along the Route 9 side of the building, requiring a parking waiver of seven stalls.
- In the center of the site in the three-story Harcourt Building (home of The Container Store), the petitioner wishes to use 5,534 sq. ft. on the third floor as general leasable office space, requiring a parking waiver of 17 stalls; the space is currently cordoned off.
- On the eastern side of the site, Aquitane restaurant proposes to add eight seats to the existing 80-seat restaurant, requiring a two-stall waiver.
- In the new Star Market building the petitioner is proposing to lease 5,700 sq. ft. of previously-approved accessory retail space for restaurant use rather than retail use. The petitioner is proposing to split the seats among three small restaurants, which will require an additional 19-stall waiver.

The shopping center currently has 1,319 parking stalls and the petitioner is proposing a waiver of 128 parking stalls, ***increasing the total parking waiver on the site to 195 stalls***. The Planning Department and City Traffic Engineer believe that parking occupancy should not exceed 95% of available spaces. The petitioner's parking study shows that at peak periods there are only 29 available spaces, or 2% of the parking supply available (98% occupancy). Without adequate overflow options in the surrounding neighborhood, some patrons may not be able to find available spaces easily and may resort to unlawful or unsafe parking conditions, such as parking in the Fire Lane as well as congesting circulation aisles.

A parking reduction for a mixed-use project is consistent with the 2007 Newton Comprehensive Plan's stated goals and preference for shared parking, provided that it does not cause overflow parking onto adjacent neighborhoods where it would deter the quality of life for residents.

I. SIGNIFICANT ISSUES FOR CONSIDERATION

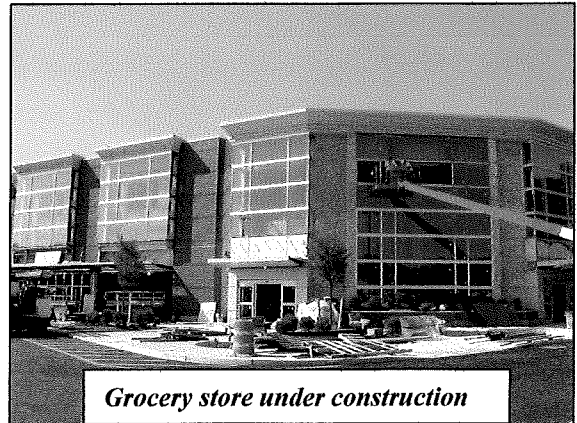
When considering this request, the Board should determine if the following findings apply:

- The proposed restaurant uses as developed and operated will increase the vitality of the Business 1 zoned commercial shopping center.
- The proposed restaurants with greater than 50 seats will not be more detrimental than the existing uses.
- The granting of a parking waiver for 128 additional parking spaces (*total of 195 spaces*) will have no adverse affects on the parking and traffic circulation in the shopping center as a whole, on abutters along the Route 9 corridor, or adjacent residential neighborhoods.

II. CHARACTERISTICS OF THE SITE AND NEIGHBORHOOD

A. Neighborhood and Zoning

Located on the north side of Route 9, the Chestnut Hill Shopping Center is zoned Business 1, as is much of the immediate commercial corridor along Route 9. The closest residential neighborhood is located just northeast of the Star Market building. Hammond Pond and Hammond Pond Reservation also abut the subject property. Although all of the commercial buildings in the shopping center are located in Newton, a portion of the site is located in the Town of Brookline.



B. Site

The 17.6-acre site consists of four parcels improved with four commercial structures and a large shared surface parking lot. Currently there are 1,319 parking stalls on-site, including the lot adjacent to Hammond Park Reservation, owned by the petitioner. Approximately 130 parking spaces of the total are located on a separate lot in the Town of Brookline.

There are four separate commercial structures on site, most of which are multi-tenant buildings with the exception of Macy's department store, which is in a single-tenant building. Parking is generally equally dispersed throughout the site, although the parking area in the northwest corner adjacent to Hammond Pond Reservation is quite far from most of the commercial uses and can generally be characterized as underutilized.

III. PROJECT DESCRIPTION AND ANALYSIS

A. Land Use

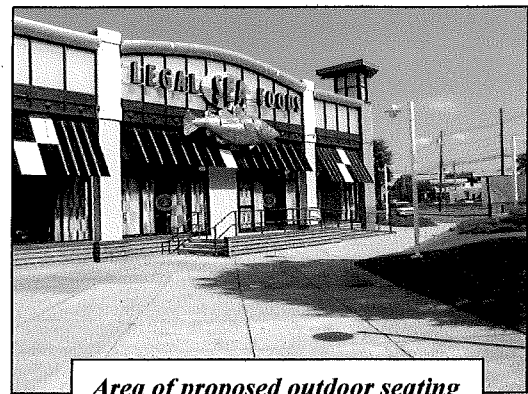
The petitioner is proposing to increase the intensity of the use of the site by adding

restaurant seats in lieu of retail space in order to reposition themselves for current economic conditions. Restaurant uses have a higher parking requirement than retail uses and results in the requested 128-stall parking waiver.

B. Building and Site Design

For the most part, proposed changes to the site are relatively modest and would take place inside existing commercial structures:

- A new restaurant would occupy a 5,643 sq. ft. space currently occupied by Portobello Road, a home and women's shop (former home of Gardener's Eden). The petitioner wishes to locate a restaurant with no more than 275 seats there. No changes to the building or outdoor seating are proposed. A restaurant with greater than 50 seats is allowed in the BU-1 zone by special permit.
- Legal Sea Foods currently occupies 9,520 sq. ft. with approximately 285 seats and hopes to add 20 more seats at ten tables outdoors. This outdoor seating would be buffered by some new plantings and a detailed planting plan will be needed. Restaurants with more than 50 seats are allowed in BU-1 zones by special permit.
- In the center of the site in the three-story Harcourt Building (home of The Container Store), the petitioner proposes to use 5,534 sq. ft. on the third floor as general leasable office space, requiring a parking waiver of 17 stalls; that space is currently cordoned off.
- Aquitane currently occupies 3,040 sq. ft. at the eastern end of the site with 80 seats and is seeking to add eight additional seats within the existing restaurant. A restaurant with more than 50 seats is allowed in a BU-1 zone by special permit.
- Finally, the petitioner is proposing to re-program 5,708 sq. ft. of the 10,610 sq. ft. of accessory retail space on the ground floor of the new Star Market building for restaurant use by dividing the space among three separate restaurants. Each of these restaurants will have fewer than 50 seats, which are allowed in BU-1 districts by right; however, the change in use results in a need for an additional 19-stall waiver. Elevations for this project were approved as part of the special permit in 2003 and the petitioner proposes no exterior changes at this time.



C. Parking and Circulation

There are currently 1,319 parking spaces associated with the subject property and the petitioner is not proposing to make any changes to the parking area. The petitioner received a 67-stall parking waiver in 2003 when the Star Market (reconstruction) was approved. At that time, the Board acknowledged that the existing parking lot was pre-existing, legal nonconforming with respect to the layout and number of spaces. The petitioner is now seeking an additional 128-stall waiver, bringing the current waiver up to 195 stalls.

The petitioner submitted a parking study from Walker Parking Consultants, Inc. which performed a shared use analysis on the existing development. In its analysis, Walker identifies a supply of 1,319 parking spaces and a projected adjusted parking demand of 1,290 parking spaces, which results in a surplus of 29 parking spaces. It concludes that parking supply would be adequate to meet the demand of the proposed developments.

The Planning Department and City Traffic Engineer concur that a reduction in parking for mixed-use projects is fitting, given that people generally park once and visit more than one store. However, we do not believe the parking provided will adequately serve the demand. In this analysis, 29 available parking spaces represent 2% of the total supply (98% occupancy). Generally, occupancy rates between 85% to 90% occupancy are preferred, as this allows 10-15% of the spaces to remain available so arriving customers can easily find parking spots. Depending on how often the spaces turn over, 95% occupancy may have no adverse impacts (such as in lots where people park all day). However, we do not believe 29 parking spaces will provide adequate overflow parking on a lot of this size with a high rate of turnover and are concerned that patrons who are unable to find parking spaces easily, will cause traffic congestion as they search for spaces and may resort to unlawful or unsafe parking practices, such as parking in the Fire Lane and circulation aisles.

Tables 8 and 9 of the Walker study display projected future peak hour weekday and weekend parking demand. Planning Department staff is satisfied with the assumptions used in the non-captive and driving ratio factors. However, we request a more thorough discussion, including additional supporting documentation, of the monthly and peak hour factors that were used. For instance, is there justification for reducing expected parking occupancy for a Cineplex during December weekend evenings? Are there peak hour studies for this location that align with those used for the Walker analysis? The answers to these questions and justification of assumptions, in general, would aid staff in its review.

The petitioner did not address techniques which are currently in use or which may be initiated, to reduce the demand for on-site parking. The site is relatively close to the Chestnut Hill MBTA Station and is located on MBTA Bus Route 60. Transportation Demand Management (TDM) techniques should be implemented to try to reduce single-occupant-vehicle trips into Chestnut Hill Shopping Center. Such methods may include a shuttle service (which may be coordinated with current and future generators in the immediate area) and employee incentives for increased carpooling, cycling, and transit use. Such techniques could be included in a Parking Management Plan for the site.

There is an underutilized parking area located in the northwest corner of the site, farthest from the Star Market. Planning Department staff recommends that the petitioner examine the feasibility of using this lot as a valet lot for restaurant use at peak periods, which would improve access to restaurants for patrons and which may maximize available space for parking during peak times, such as during the holidays. This, too, could be part of a management plan for parking in the center.

Other communities have initiated programs in which payments are made to a community in lieu of parking waivers associated with special permit developments. In-lieu payments may be used toward reducing parking demand or improving existing parking conditions. Planning Department staff recommends the Board of Aldermen consider such a program for possible implementation.

D. Snow Removal

The petitioner should address how snow removal would be handled in a way that does not further reduce the number of available parking spaces or cause polluting run-off into Hammond Pond.

E. Landscape Screening, Lighting, Signage

The petitioner has submitted a sketch of proposed screening for the Legal Sea Foods' outdoor seating area, but does not propose other substantive changes to screening, lighting, or signage in the shopping complex. Prior to being scheduled for a Working Session, Planning Department staff recommends the petitioner submit details for landscaping of this area.

IV. COMPREHENSIVE PLAN

The Transportation and Mobility section of the *2007 Newton Comprehensive Plan* establishes two primary goals: (1) to enhance and promote equity in mobility and (2) to maintain the City character and quality of life. In so doing, it urges shared-use parking to make better use of existing resources, and incentives for use of alternative modes of transportation where possible. Like a village center, the shopping center provides a mix of uses that benefit from each others' presence. The complementary uses demand less overall parking, since people can frequent several stores after parking, thus eliminating the need for the minimum required parking for each individual business. A parking reduction for a mixed-use project is consistent with the *Comprehensive Plan*, provided that it does not cause overflow parking onto adjacent neighborhoods where it would deter the quality of life for residents. Additional incentives for use of alternative modes also would further the goals of the *Comprehensive Plan*.

V. TECHNICAL REVIEW

- A. Technical Considerations (Section 30-15). The Zoning Review Memorandum, dated August 7, 2009 (*SEE ATTACHMENT "C"*), provides an analysis of the project with regards to the City's zoning regulations. The building and parking are legally nonconforming and the petitioner is not seeking to change these nonconformities.
- B. Parking Requirements (Section 30-19). The Zoning Review Memorandum provides an analysis of the proposal with regard to Section 30-19. The petitioner is currently seeking a waiver of 128 required parking spaces in order to accommodate the proposed number of restaurant seats and required staffing levels on the largest shift.

NOTE: The petitioner submitted the request for an additional 17-stall waiver for The Container Store after the Zoning Memorandum was written.

C. Other Reviews

1. Engineering. Associate City Engineer, John Daghljan noted that the change from retail to restaurant use will warrant installation of gas traps in the sewer lines. Because of the location of the site (between Brookline and Newton), the engineer of record must verify the location of the service, jurisdiction, and standards to be followed (*SEE ATTACHMENT "C"*).
2. Traffic. Senior Transportation Planner David Koses and Assistant City Transportation Engineer Jim Danila have reviewed the submitted parking analysis and contributed to the Parking and Circulation Section of this report.
3. Fire Department. Comments from the Fire Department have not been received.
4. Prior Board Orders. A copy of the 2003 Board Order is on file in the City Clerk's office and Planning Department and will be available at the Public Hearing and Working Session.
5. Conservation Commission. In 2007, the City of Newton was completing a Section 319 (storm water) grant from the MA Department of Environmental Protection to construct sand filters and plant the bio-retention ponds constructed in the parking lot and between the parking and the pond, respectively, and trying to finalize an agreement for an access easement to maintain the above structures. It is our understanding that, for some reason, no agreement was reached. Without an easement, the City (Department of Public Works) is unable to access the sand filters and the bio-retention cells in order to maintain them. Planning Department staff recommends that the Board of Aldermen request such an easement from the petitioner if the Board agrees to approve this request.

VI. ZONING RELIEFS SOUGHT

The petitioner is seeking approval through or relief from:

- Section 30-11(d)(9), to allow a restaurant with more than 50 seats in the BU-1 zone;
- Section 30-21(b), to increase the number of seats in legal nonconforming restaurants;
- Section 30-19(d), and 30-19(m), to waive 126 parking stalls;
- Section 30-23, for site plan approval; and
- Section 30-24, for approval of special permits.

VII. SUMMARY OF PETITIONER'S RESPONSIBILITIES

The petitioner should respond to all issues raised in this memorandum prior to being scheduled for a Working Session.

ATTACHMENTS

ATTACHMENT A: *Zoning Map*

ATTACHMENT B: *Land Use Map*

ATTACHMENT C: *Engineering Memo, dated September 30, 2009*

ATTACHMENT D: *Zoning Review Memorandum, dated June 11, 2009*

Zoning Map

Chestnut Hill
Shopping Center

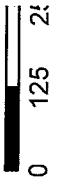
Legend

- Chestnut Hill Shopping Center
- Building Outlines
- Single Res. 1
- Single Res. 2
- Single Res. 3
- Business 1
- Business 2
- Business 4
- Business 5
- Limited Manufacturing
- Manufacturing
- Multi-Res. 1
- Multi-Res. 2
- Multi-Res. 3
- Multi-Res. 4
- Mixed Use 1
- Mixed Use 2
- OS/Rec.
- Public Use

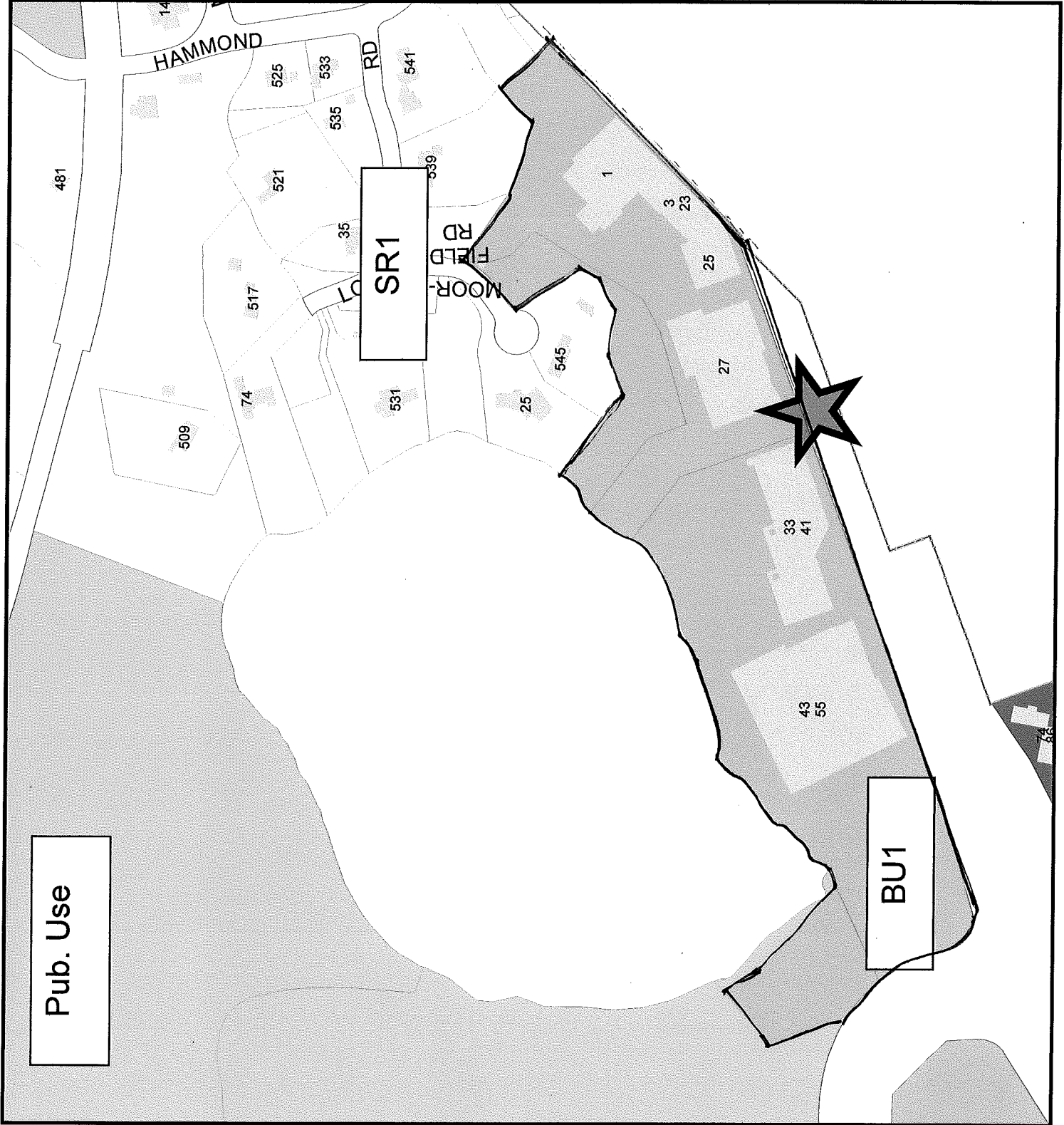


ATTACHMENT A

The information on this map is for informational purposes only. It is not intended to be used for any legal or financial purpose. The City of Newton cannot guarantee the accuracy of the information. Each user of the information is responsible for determining its suitability for their purpose. City departments are not responsible for any errors or omissions.



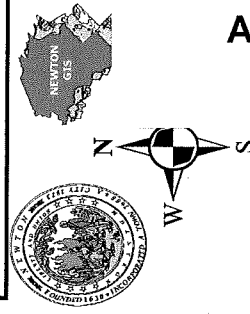
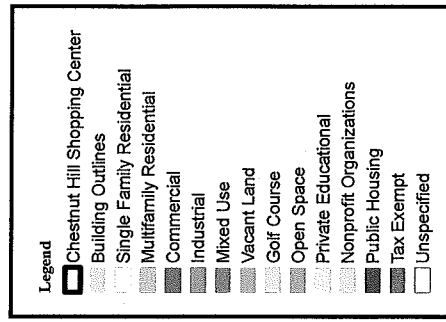
MAP DATE: October 2011



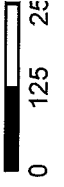
Land Use Map

Chestnut Hill
Shopping Center

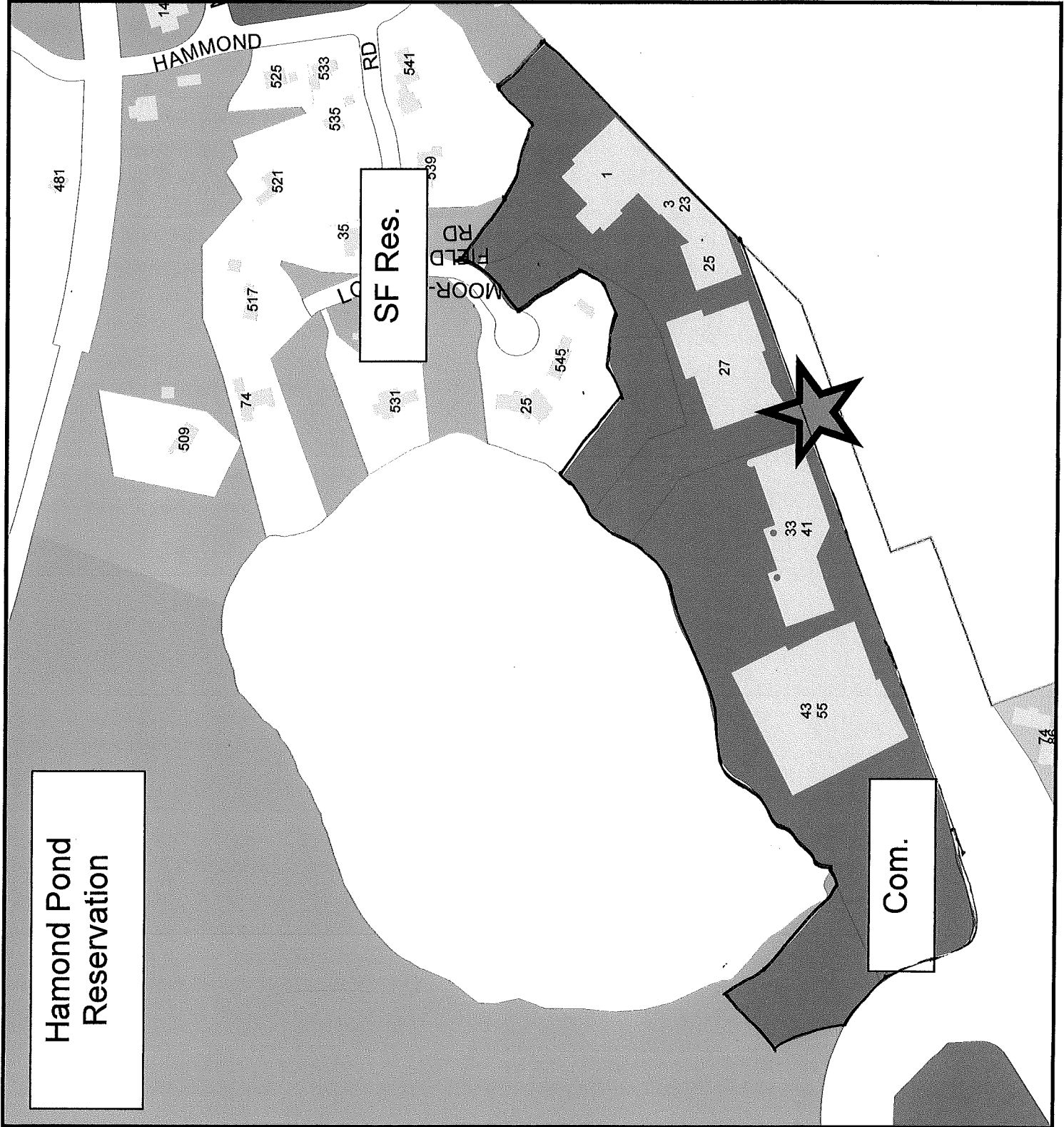
ATTACHMENT B



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MAP DATE: October 2011



CITY OF NEWTON
ENGINEERING DIVISION

MEMORANDUM

To: Alderman George Mansfield, Land Use Committee Chairman

From: John Daghljan, Associate City Engineer

Re: Special Permit – Chestnut hill Shopping Center

Date: September 30, 2009

CC: Lou Taverna, PE City Engineer (via email)
Candice Havens, Chief Planner (via email)
Linda Finucane, Associate City Clerk (via email)
Eve Tapper, Chief Zoning Officer, (via email)
Alexandra Ananth, Planner (via email)

In reference to the above site, I have the following comments for a plan entitled:

*Proposed Restaurant Seating Exhibit
Newton, MA
Prepared by: WS Development
Dated: May 26, 1009*

1. Due to change in use from retail to restaurant, the sewer service to these units should be retrofitted with gas traps. Depending upon where the sewer exists these units (Brookline or Newton) the engineer of record needs to verify which municipality's jurisdiction and standards would have to be observed.
2. Prior to Occupancy permit being issued, an As-Built Plan shall be submitted to the Engineering Division in both digital format and in hard copy. The plan should show all utilities and final grades, any easements and final grading. *This note must be incorporated onto the site plan.*
3. If a Certificate of Occupancy is requested prior to all site work being completed, the applicant will be required to post a Certified Bank Check in the amount to cover the remaining work. The City Engineer shall determine the value of the uncompleted work. *This note must be incorporated onto the site plan.*


Note: If the plans are updated it is the responsibility of the Applicant to provide all City Departments [Conservation Commission, ISD, and Engineering] involved in the permitting and approval process with complete and consistent plans.

If you have any questions or concerns please feel free to contact me @ 617-796-1023.

Zoning Review Memorandum

Dt: August 7, 2009

To: John Lojek, Commissioner of Inspectional Services

Fr: Eve Tapper, Chief Zoning Code Official
Candace Havens, Chief Planner 

Cc: Michael Kruse, Director, Department of Planning and Development
Franklin G. Stearns, representing S.R. Weiner Associates, Inc./Chestnut Hill Shopping Center LLC/C&R Realty Trust Limited Partnership
Ouida Young, Associate City Solicitor

RE: Request to add a restaurant with greater than 50 seats as well as to waive parking spaces to accommodate several new uses.

Applicant: S.R. Weiner Associates, Inc./Chestnut Hill Shopping Center LLC/C&R Realty Limited Partnership

Site: 1-27 Boylston Street, 33-55 Boylston Street

SBL: Section 63, Block 37, Lots 25, 26, 27 & 18A

Zoning: BU-1

Lot Area: 767,306 sq. ft.

Current use: Retail stores, restaurants and offices

Proposed use: Retail stores, restaurants and offices

Background:

The subject properties consist of a total 767,306 square feet and are currently improved with structures containing a mix of uses and a surface parking lot, collectively called the "Chestnut Hill Shopping Center." An adjacent parcel located in Brookline contains additional parking spaces to serve the Shopping Center. The properties have been the subject of several special permits in previous years (Board Orders #401-03 [approved December 15, 2003] and #317-03(5) & #317-03(6) [both approved on August 14, 2006]).

The Shopping Center obtained a special permit from the Board of Aldermen in 2003 for the Star Market expansion currently under construction. The proposal at that time was for a new and expanded Star Market (49,073 square feet) with an additional 10,610 square feet of space for smaller, accessory retail stores. As part of that approval, the Board of Aldermen acknowledged that the existing parking lot was pre-existing, legal non-conforming with respect to the parking layout and the number of spaces (Board Order #401-03, Conditions #2,3,&4). In the Board Order, the Board of Aldermen also waived a number of parking spaces to allow for the increased density of uses proposed at the that time.

The property owner now wants to change the mix of uses on the site further by adding more seats to two existing restaurants (Legal Seafoods and Aquitane) and replacing one existing retail space with a new restaurant. The applicant is also proposing to reprogram more than half of the accessory retail space in the new Star Market building to restaurant use rather than retail.

The following review is based on plans and materials received to date as noted below.

Plans and materials reviewed:

- "Chestnut Hill Shopping Center Restaurant Conversions Parking Calculations,," dated June 30,2009 ,July 22, 2009 and August 6, 2009
- "EXH Proposed Restaurant Seating Exhibit, Chestnut Hill, MA, Chestnut Hill Shopping Center," WS Development, dated May 26, 2009, neither signed nor stamped by a licensed professional
- "ASK-2 Legal Seafoods, Patio Seating Options, Scheme 2," neither signed nor stamped by a licensed professional, dated June 12, 2006 and 5/19/09
- "C-4, Star Market, Newton, Massachusetts, Project Area Plan/Special Permit Application," signed and stamped by Gregg M. Mikolaities, Registered Professional Engineer, dated October 15, 2003
- "Sheets 1, 2 & 3 ALTA/ACSM Land Title Survey, Chestnut Hill Shopping Center, Newton/Brookline, Mass." signed and stamped by Daniel Gerard MacIsaac, Professional Land Surveyor, dated 9/24/2004

Administrative determinations:

1. The subject property is in the BU-1 zone. The applicants propose to replace 5,708 square feet of the 10,610 square feet identified in the 2003 Star Market special permit as retail space with three small restaurants. Each of these restaurants will have fewer than 50 seats and are, therefore, allowed in the zoning district by right per Section 30-11(a)(9). However, the parking demand for restaurants is generally more intense than it is for retail space. This parking issue will be addressed in more detail later in this memo.
2. The proponents are also seeking to convert an existing 5,000+ square feet retail space into a 275-seat restaurant. A restaurant with greater than 50 seats is allowed in the BU-1 zone with a special permit from the Board of Aldermen under Section 30-11(d)(9).
3. The current project proposes to add seats to two existing restaurants (Legal Seafoods and Aquitane). Both of these restaurants currently have greater than 50 seats without the benefit of a special permit. They are pre-existing, legal non-conforming uses. Each space has been occupied as a restaurant continuously since before the Zoning Ordinance was amended to require a restaurant with greater than 50 seats in the BU-1 zone to obtain a special permit. In order to add more seats to these restaurants, the applicant must obtain a special permit from the Board of Aldermen under Section 30-21(b).
4. Per Section 30-19(d), the proposed uses require 1874 parking stalls. The existing uses, including those uses approved under the 2003 Star Market special permit that are still being constructed, require 1765 parking stalls (see chart below). Board Order #401-03 approved the parking configuration for all the uses, existing and proposed, as part of the Star Market reconstruction project. The applicant must only provide the additional 109 (1874-1765=109) parking spaces as required for the new uses proposed in this application.

Use	Spaces Required by Existing Use	Proposed Use*	Spaces Required by Proposed Use
Aquitane (80 seats)	33	Aquitane (86 seats)	35
Barkan	144	Barkan	144
Macy's (formerly Bloomingdale's)	419	Macy's (formerly Bloomingdale's)	419
Century Bank	15	Century Bank	15
City Sports	43	City Sports	43
Vacant Retail (formerly Fine Wine)	7	Vacant Retail (formerly Fine Wine)	7
Bank of America ATM	1	Bank of America ATM	1
Bank of America	12	Bank of America	12
Retail	20	New Restaurant	103
Harcourt office building/movie theatre	574	Harcourt office building/movie theatre	574
Container Store	92	Container Store	92
La Rotisserie restaurant	14	La Rotisserie restaurant	14
Legal Seafoods	115	Legal Seafoods	122
L'Elegance salon	10	Retail	8
Verizon	14	Verizon	14
Rosie's Bakery	7	Rosie's Bakery	7
Rugged Bear	24	Rugged Bear	24
Shaw's (approved, but still in construction)	181	Shaw's (approved, but still in construction)	181
Retail in new Shaw's building (approved, but still in construction)	40	Tenant #1/Restaurant	14
N/A		Tenant #2/Restaurant	11
N/A		Tenant #3/Retail	11
N/A		Tenant #4/Restaurant	5
N/A		Retail in new Shaw's building	18
TOTAL	1765		1874

*The number of employees for proposed new restaurants (necessary for calculating parking demand) is estimated using an ITE/ULI formula provided by the petitioner. For existing restaurants, the employee count is an actual number as provided by petitioner.

5. See "Zoning Relief Summary" below:

Zoning Relief Summary		
Ordinance	Use	Action Required
§30-11(d)(9)	Allow restaurant of greater than 50 seats in the BU-1 zone.	SP per §30-24
§30-21(b)	Increase the number of seats in legal nonconforming restaurants	SP per §30-24
	Parking	
§30-19(d), 30-19(m)	Waiver 109 required parking spaces	SP per §30-24